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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,915	08/29/2006	Motoji Ohmori	2006_1423A	4209
52349 7590 04/01/2010 WENDEROTH, LIND & PONACK L.L.P. 1030 15th Street, N.W. Suite 400 East Washington, DC 20005-1503				
EXAMINER				
AUGUSTIN, EVENS J				
ART UNIT		PAPER NUMBER		
3621				
NOTIFICATION DATE		DELIVERY MODE		
04/01/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com  
coa@wenderoth.com

### Office Action Summary

**Application No.**

10/590,915

**Applicant(s)**

OHMORI ET AL.

**Examiner**

EVENS J. AUGUSTIN

**Art Unit**

3621

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date 08/29/2006

### DETAILED ACTION

1. Claims 1-14 are pending and have been examined.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pond et al. (U.S. 20040030601) ("Pond"), in view of Dunkeld et al. (U.S. 20030110126) ("Dunkeld").
4. For examination purposes the PTO interprets the word "operable to" in an apparatus claim as functional language, as it defines what the host system does, rather than what it is. The PTO has evaluated and considered the functional language for what it fairly conveys to a person of ordinary skill in the art. However, for an apparatus claim, patentable weight is given to the actual structure. Applicant can restructure the claim language to include for example: server apparatus with computer-readable storage medium with executable program stored thereon, wherein the program instructs a microprocessor to...

5. As per claims 1-14, Pond discloses an invention that comprises of the following:
- a) Content server, par. 122 and fig. 13, item 1340;
  - b) Information terminal/mobile station, Fig. 13, item 1330 and par. 122;
  - c) ("purchasing the usage information from an external server apparatus") –purchasing music content from a server, par. 122. Per par. 6 of applicant's published specification, purchasing usage information is equivalent to purchasing content to use;
  - d) ("outputting the purchased usage information to a usage apparatus that is to use the content") – purchasing the content with a mobile station or phone, Fig. 13, item 1330 and par. 122. Downloading or outputting content to mobile phone, par. 122;
  - e) ("transmitting settlement request information to a settlement apparatus") – mobile station transmitting digital cash request to server, par. 103-104;
  - f) Pond did explicitly teach content usage.
  - g) Dunkeld teaches the aspect rights or terms of use for digital content, par. 57, 163
  - h) Therefore, it would have been obvious for a person of ordinary skill in the art at the time of applicant's invention to construct a content distribution system with content rights or terms of use.
  - i) The motivation for doing so would be to provide users with a framework for using the content in a legal manner.

### *Conclusion*

6. Examiner has pointed out particular references contained in the prior arts of record in the body of this action for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that if the applicant is preparing to respond, to consider fully the entire references as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior arts or disclosed by the examiner.
7. In determining patentability of an invention over the prior art, the USPTO has considered all claimed limitations, and interpreted as broadly as their terms reasonably allow. Additionally, all words in the claims have been considered in judging the patentability of the claims against the prior art.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evens Augustin whose telephone number is 571-272-6860. The examiner can normally be reached on Monday thru Friday 8 to 5 pm.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on 571-272-6779.

*/Evens J. Augustin/*  
Evens J. Augustin  
April 1, 2010  
Art Unit 3621